

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMELIA D. PEREZ and CONSTANTINO  
R. PEREZ,

Plaintiffs,

v.

JPMORGAN CHASE BANK, a National  
Association F/K/A WASHINGTON  
MUTUAL BANK; CALIFORNIA  
RECONVEYANCE COMPANY, a  
California Corporation; and  
LASALLE BANK, NA,

Defendants.

No. C 11-03602 CW

ORDER GRANTING  
DEFENDANTS' MOTION  
TO DISMISS

Defendants JPMorgan Chase Bank (JPMorgan), California  
Reconveyance Company (CRC) and Bank of America<sup>1</sup> move pursuant to  
Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint  
against them. Pro se Plaintiffs Amelia D. Perez and Constantino  
R. Perez oppose the motion.<sup>2</sup> Having considered the papers filed

<sup>1</sup> Bank of America acquired LaSalle Bank in 2007. Plaintiffs  
erroneously named "LaSalle Bank."

<sup>2</sup> On February 13, 2012, Defendants filed a "Notice of Non-  
Receipt of Opposition to Motion to Dismiss Complaint" in which  
they requested that the Court grant the motion to dismiss in its  
entirety, without leave to amend, as unopposed. The Court denies  
this request. The Court will consider the opposition Plaintiffs  
filed on November 3, 2011, in response to Defendants' first motion  
to dismiss.

1 by the parties,<sup>3</sup> the Court GRANTS the motion to dismiss, and  
2 GRANTS Plaintiffs leave to amend one of their claims.

3 BACKGROUND

4 On December 8, 2006, the Perezes obtained a \$1,000,000.00  
5 loan to "own the Property" located at 1116 Ridgewood Drive,  
6 Millbrae, California, in the County of San Mateo. Comp. ¶ 19.  
7 The loan was secured by a deed of trust (DOT) which identified the  
8 Perezes as the borrowers, Washington Mutual Bank (WaMu) as the  
9 lender and beneficiary, and CRC as the trustee. Request for  
10 Judicial Notice (RJN), Ex. 2.

11  
12 On September 25, 2008, the Office of Thrift Supervision  
13 closed WaMu and appointed the Federal Deposit Insurance  
14 Corporation (FDIC) as receiver for WaMu's assets. On the same  
15 date, JPMorgan acquired certain assets of WaMu, including WaMu's  
16 interest in the Perezes' loan, pursuant to a Purchase and  
17 Assumption Agreement (P&A Agreement) between the FDIC and  
18 JPMorgan. Section 2.5 of the P&A Agreement provides that JPMorgan  
19 would not assume WaMu's liabilities relating to borrower claims.  
20 RJN, Ex. 6. Borrowers must direct such claims to the FDIC.

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22 On February 2, 2009, JPMorgan transferred all beneficial  
23 interest under the DOT on the Perezes' loan to Bank of America.  
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25 <sup>3</sup> The Perezes also oppose JPMorgan, CRC and Bank of America's  
26 request for judicial notice. The Court grants the request for  
27 judicial notice. See Fed. R. Civ. P. 12(d); Mir v. Little Co.,  
28 844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial notice  
of matters of public record without converting motion to dismiss  
into motion for summary judgment).

1 RJN, Ex. 3. On that same date, a Notice of Default was recorded  
2 with the San Mateo County Recorder's Office. It indicated that as  
3 of January 30, 2009, the amount in arrears on the Perezes' loan  
4 was \$13,298.14. RJN, Ex. 4. On May 6, 2009, a Notice of  
5 Trustee's Sale of the Perezes' property was recorded with the San  
6 Mateo County Recorder's Office. RJN, Ex. 5.

7  
8 On May 26, 2011, the Perezes filed a complaint in the  
9 Superior Court of the State of California for the County of San  
10 Mateo. The Perezes allege twenty-four causes of action against  
11 JPMorgan, CRC and Bank of America. Three causes of action  
12 implicate federal law. In their fifth and sixth claim,  
13 respectively, the Perezes allege that JPMorgan, CRC and Bank of  
14 America violated the Truth in Lending Act (TILA), 15 U.S.C.  
15 §§ 1601 et seq., and the Real Estate Settlement Procedures Act  
16 (RESPA), 12 U.S.C. §§ 2601 et seq. In their fourteenth claim, the  
17 Perezes allege that they are entitled to rescind their loan under  
18 TILA.  
19

20 On July 21, 2011, JPMorgan, CRC and Bank of America removed  
21 this action to federal district court pursuant to 28 U.S.C.  
22 §§ 1441 et seq. On January 23, 2012, they filed this motion to  
23 dismiss the complaint for failure to state a claim upon which  
24 relief can be granted under Federal Rule of Civil Procedure  
25 12(b)(6).  
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## DISCUSSION

## I. Legal Standard

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the court will take all material allegations as true and construe them in the light most favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). However, this principle is inapplicable to legal conclusions; "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not taken as true. Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949-50 (2009) (citing Twombly, 550 U.S. at 555). Moreover, the court holds pro se pleadings to "less stringent standards" than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972).

When granting a motion to dismiss, the court is generally required to grant the plaintiff leave to amend, even if no request to amend the pleading was made, unless amendment would be futile. Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 246-47 (9th Cir. 1990). In determining whether

1 amendment would be futile, the court examines whether the  
2 complaint could be amended to cure the defect requiring dismissal  
3 "without contradicting any of the allegations of [the] original  
4 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th  
5 Cir. 1990).

6 II. TILA

7 The purpose of TILA is "to assure a meaningful disclosure of  
8 credit terms so that the consumer will be able to compare more  
9 readily the various credit terms available to him and avoid the  
10 uninformed use of credit." Yamamoto v. Bank of N.Y., 329 F.3d  
11 1167, 1169 (9th Cir. 2003) (citing 15 U.S.C. § 1601(a)). If  
12 required disclosures are not made, the consumer has two remedies:  
13 1) recover damages, 15 U.S.C. § 1640; or 2) seek to rescind the  
14 loan, 15 U.S.C. § 1635(a). TILA damages claims are cognizable  
15 against creditors, 15 U.S.C. § 1640(a), and assignees of  
16 creditors, 15 U.S.C. § 1641(a).

17 A. Damages

18 JPMorgan, CRC and Bank of America argue that the Perezes'  
19 claim for damages is barred by the one-year statute of limitation.  
20 Claims for damages for TILA violations must be brought "within one  
21 year from the date of the occurrence of the violation." 15 U.S.C.  
22 § 1640(e). The statutory period generally runs from the date the  
23 loan transaction was consummated. Meyer v. Ameriquist Mortg. Co.,  
24 342 F.3d 899, 902 (9th Cir. 2003). The Perezes entered into the  
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1 loan agreement on December 8, 2006, so any claim for damages for  
2 TILA violations expired on December 8, 2007.

3 The Perezes filed this action on May 26, 2011, approximately  
4 three and a half years after their TILA damages claim expired.  
5 They argued that "any and all statute[s] of limitations" should be  
6 equitably tolled. Comp. ¶ 72. Equitable tolling may be  
7 appropriate when the borrower, using reasonable diligence, might  
8 not have had an opportunity to discover the fraud or  
9 nondisclosures on the part of the originator at the time that the  
10 loan was consummated. Meyer, 342 F.3d at 902. Here, the Perezes  
11 allege that they were never given a complete loan document package  
12 needed to conduct their own due diligence. They state that some  
13 of the pertinent disclosures they did not receive were the Truth-  
14 in-Lending statement, Adjustable Rate Booklet and Right to Copy of  
15 Appraisal. Comp. ¶ 72. Moreover, the Perezes allege that when  
16 they called JPMorgan to learn "exactly how their loan functions  
17 and adjusts," the representative at JPMorgan "painted a very rosy  
18 picture." Id. The representative "convinced [the Perezes] that  
19 they were more than able to afford the home they were applying  
20 for" and failed to explain that the initial payment structure was  
21 only temporary and that payments would soon go up dramatically.  
22 Id. The Perezes claim that "it wasn't till only recently when  
23 [their] payments changed dramatically that they realized what they  
24 had gotten themselves into." Id.

1 The Perezes' allegations support their argument for equitable  
2 tolling, but they are not sufficient to support tolling from  
3 December 8, 2007 to their filing date of May 26, 2011. The  
4 Perezes claim that they did not know the actual terms of their  
5 loan until "only recently" when their payments "changed  
6 dramatically," but they fail to specify when that occurred. See  
7 Comp. ¶ 72. Because the Perezes defaulted on their loan as of  
8 February 2, 2009, it is sensible to infer that they must have  
9 become aware of the actual terms of their loan by that point. See  
10 RJN, Ex. 4. In that case, the TILA damages claim would still be  
11 barred by the one-year statute of limitation.

12  
13 Because the Perezes do not allege adequate facts to establish  
14 that their TILA damages claim should be equitably tolled to their  
15 filing date of May 26, 2011, the Court DISMISSES this claim, with  
16 leave to amend to establish a sufficient basis for equitable  
17 tolling.  
18

19 B. Rescission

20 The Perezes allege that they are entitled to rescind their  
21 loan under TILA. Comp. ¶ 125. JPMorgan, CRC and Bank of America  
22 argue that the Perezes' loan was a purchase money loan in a  
23 residential mortgage transaction and is thereby exempted from the  
24 right to rescission under TILA. Defendants are correct.  
25

26 Rescission of a residential purchase money mortgage  
27 transaction is not an available remedy under TILA. Section  
28 1635(e) states that "a residential mortgage transaction," as

1 defined in 15 U.S.C. § 1602(w), is not subject to rescission.  
2 Section 1602(w) defines a "residential mortgage transaction" as "a  
3 transaction in which a mortgage, deed of trust, purchase money  
4 security interest arising under an installment sales contract, or  
5 equivalent consensual security interest is created or retained  
6 against the consumer's dwelling to finance the acquisition or  
7 initial construction of such dwelling." Here, the Perezes entered  
8 into a residential purchase money mortgage transaction, secured by  
9 a deed of trust, for the express purpose to "own the Property."  
10 See Comp. ¶ 19; RJN, Exs. 1-2. The Perezes do not have a  
11 statutory right under TILA to rescind their residential purchase  
12 money mortgage transaction. See Washington v. Nat'l City Mortg.  
13 Co., 2011 WL 1842836, at \*6 (N.D. Cal.); Lee v. BAC Home Loans  
14 Servicing, LP, 2011 WL 794942, at \*3 (E.D. Cal.); Saldate v.  
15 Wilshire Credit Corp., 268 F.R.D. 87, 96 (E.D. Cal. 2010).

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18 Because any amendment would be futile, the Perezes' claim for  
19 rescission under TILA is DISMISSED without leave to amend.

20 III. RESPA

21 The purpose of RESPA is to ensure that home buyers "are  
22 provided with greater and more timely information on the nature  
23 and costs of the settlement process and are protected from  
24 unnecessarily high settlement charges caused by certain abusive  
25 practices." 12 U.S.C. § 2601(a). The Perezes allege that  
26 JPMorgan, CRC and Bank of America violated RESPA by paying illegal  
27 kickbacks related to their loan from Wamu on September 8, 2006.  
28

1 Comp. ¶¶ 83-84. This claim cannot be maintained against JPMorgan,  
2 CRC or Bank of America.

3 Federal district courts in the Ninth Circuit have held that  
4 JPMorgan is shielded from liability for borrower claims against  
5 WaMu that predate the September 25, 2008 P&A Agreement between  
6 JPMorgan and the FDIC, as receiver of WaMu assets. See RJN, Ex.  
7 6; see also Javaheri v. JPMorgan Chase Bank, N.A., 2011 WL 97684,  
8 at \*3 (C.D. Cal.); St. James v. JP Morgan Chase Bank Corp., 2010  
9 WL 5349855, at \*2-3 (S.D. Cal.); Rundgren v. Washington Mut. Bank,  
10 F.A., 2010 WL 4960513, at \*7 (D. Haw.). Here, the Perezes allege  
11 that JPMorgan committed a RESPA violation with respect to their  
12 loan from Wamu on September 8, 2006. The Perezes cannot maintain  
13 their RESPA cause of action against JPMorgan because, pursuant to  
14 the September 25, 2008 P&A Agreement, WaMu's alleged lending  
15 improprieties cannot be imputed to JPMorgan. The Perezes must  
16 address their RESPA violation claim to the FDIC.  
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18  
19 As noted above, CRC is a trustee of the Perezes' loan and  
20 Bank of America received the beneficial interest under the DOT  
21 from JPMorgan on February 2, 2009. Because the Perezes' RESPA  
22 claim derives from the origination of the loan transaction with  
23 WaMu on September 8, 2006, it cannot be maintained against CRC or  
24 Bank of America because these parties were not involved with the  
25 improprieties WaMu allegedly committed during the course of the  
26 loan negotiations.  
27  
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1 Thus, the Court DISMISSES the Perezes' RESPA violation claim.  
2 Leave to amend is denied because any amendment would be futile.

3 CONCLUSION

4 For the foregoing reasons, the Court GRANTS the motion to  
5 dismiss. The Perezes' sixth claim for violation of RESPA and  
6 fourteenth claim for rescission under TILA are DISMISSED without  
7 leave to amend. The Perezes' fifth claim for damages under TILA  
8 is DISMISSED with leave to amend to establish a sufficient basis  
9 for equitable tolling. If the Perezes choose to file an amended  
10 complaint, they must do so within two weeks from the date of this  
11 order. If the Perezes do not file an amended complaint within  
12 this time, their TILA damages claim will be dismissed for failure  
13 to prosecute and the remaining state claims will be remanded to  
14 state court. Meanwhile, the parties shall participate in the  
15 further Alternative Dispute Resolution phone conference set for  
16 May 2, 2012 at 3:00 p.m.

17  
18 IT IS SO ORDERED.

19 Dated: 3/15/2012

20   
21 CLAUDIA WILKEN  
22 United States District Judge

23 cc: ADR  
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